



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 30776305

Date: JULY 8, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a stage actor, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with “extraordinary ability.” *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. 1153(b)(1)(A). Successful petitioners in this category must demonstrate “sustained national or international acclaim” and extensively document recognition of their achievements in their fields. *Id.*

The Director of the Nebraska Service Center denied the petition. The Director found that the Petitioner met the requested category’s initial evidentiary requirements. But the Director concluded that the Petitioner did not establish his claimed place among the small percentage at the very top of his field or his intent to continue working in the United States in his field. *See* section 203(b)(1)(A)(i),(ii) of the Act. On appeal, the Petitioner claims that the Director applied too strict a standard of review and overlooked evidence.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the record lacks sufficient evidence of his claimed placement among the very top of his field. We will therefore dismiss the appeal.

**I. LAW**

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that:

- They have “extraordinary ability in the sciences, arts, education, business, or athletics;”
- They seek to continue work in their field of expertise in the United States; and
- Their work would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term “extraordinary ability” means expertise commensurate with “one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). Evidence must

demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary standards. 8 C.F.R. § 204.5(h)(3)(i-x).<sup>1</sup>

If a petitioner meets either of the evidentiary criteria above, USCIS must make a final merits determination as to whether the record, as a whole, establishes their sustained national or international acclaim and recognized achievements placing them among the small percentage at their field's very top. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010) (requiring a two-part analysis of extraordinary ability); *see generally* 6 *USCIS Policy Manual* F.(2)(B), [www.uscis.gov/policy-manual](http://www.uscis.gov/policy-manual).

## II. ANALYSIS

The Petitioner, a Chinese national and citizen, has about 30 years' experience as a stage actor in his home country. He joined a Chinese stage play arts center in 1995 and now also serves as its director. The Petitioner has won Chinese acting awards and has written articles about acting. He stated that, in the United States, he would continue to work as a stage actor.

The record does not indicate – nor does the Petitioner claim – his receipt of a major international award. He therefore had to meet at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i-x).

The Director found that he satisfied four of the requirements. On appeal, the Petitioner contends that he meets at least three others. But, because he has met the requisite number of evidentiary criteria, we need not consider his qualifications for any others. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions). We will next consider the Director's final merits determination, which found insufficient evidence of the Petitioner's claimed extraordinary ability.

### A. Extraordinary Ability

During a final merits determination, USCIS should consider a petition in its entirety. 6 *USCIS Policy Manual* F.(2)(B)(2). A petitioner must demonstrate that they have sustained national or international acclaim and that their achievements have been recognized in their field of expertise, indicating that they are one of that small percentage who have risen to the very top of their field. *Id.*

USCIS considers any potentially relevant evidence, even if it does not fit one of the regulatory evidentiary criteria or was not submitted as comparable evidence. *Id.* A petition's approval or denial is based on the type and quality of evidence submitted. *Id.*

The record supports the Director's conclusion that "[t]he record as a whole . . . does not establish the beneficiary's eligibility for the benefit sought." The Petitioner demonstrated his receipt of Chinese theater awards. But, as the Director noted, the record does not indicate that the awards' number or prestige level identify him as one of that small percentage who has risen to the very top of their field.

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<sup>1</sup> If the standards do not readily apply to a petitioner's occupation, the noncitizen may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(h)(4).

Similarly, the Petitioner provided examples of articles he wrote about acting. But he did not demonstrate that his published work has influenced the Chinese or international acting field. Thus, the record does not establish that he is one of that small percentage who have risen to the very top of their field.

On appeal, the Petitioner claims that he meets so many initial evidentiary criteria that “[t]his evidence not only passes the first [evidentiary] step [of our analysis] but [also] the second final merits determination step.”

The Petitioner, however, is mistaken. The number of evidentiary requirements met has no direct bearing on the final merits determination. Under USCIS policy, “so long as the petitioner has submitted other evidence that meets the three qualifying criteria,” an officer cannot deny a petition for failure to meet an evidentiary requirement. 6 *USCIS Policy Manual* F.(2)(B)(2). USCIS policy states: “Approval or denial of a petition is based on the type and quality of evidence submitted rather than assumptions about the failure to address different criteria.” *Id.* Thus, the number of additional evidentiary criteria beyond the requisite amount that the Petitioner meets does not necessarily merit his petition’s approval.

The Petitioner also contends that the Director’s final merits determination did not apply the proper preponderance-of-the-evidence standard of review and overlooked proof of his sustained national or international acclaim. The Petitioner, however, does not specify any examples of the Director’s purported application of an improper review standard or disregard of evidence. The Petitioner therefore has not demonstrated the claimed errors. *See* 8 C.F.R. § 103.3(a)(1)(v) (requiring an appeal “to identify *specifically* any erroneous conclusion of law or statement of fact”) (emphasis added); *see also Medina v. Garland*, 850 Fed. Appx. 556, 557 (9th Cir. 2021) (finding a noncitizen’s “conclusory argument” insufficient to demonstrate the review standard’s purported misapplication).

The Petitioner has not established extensive recognition of his achievements in his field of expertise identifying him among that small percentage who have risen to the very top of their field. We will therefore affirm the petition’s denial.

#### B. Continued U.S. Work in the Field

Our finding of insufficient evidence of the Petitioner’s claimed placement among the small percentage at the top of his field resolves this appeal. Thus, we need not reach, and hereby reserve his appellate arguments regarding his intent to continuing his stage acting work in the United States. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant did not otherwise meet their burden of proof).

### III. CONCLUSION

The Petitioner has not demonstrated extensive recognition of his achievements identifying him as one of that small percentage who have risen to the very top of their field. We will therefore affirm the petition’s denial.

**ORDER:** The appeal is dismissed.